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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Telephone Number Portability, et al*, WC Docket Nos. 07-149 & 09-109, CC Docket No. 95-116

Dear Ms. Dortch:

I write on behalf of Neustar, Inc. ("Neustar") to reiterate that the Federal Communications Commission ("FCC" or "the Commission") would be acting unlawfully if it or the Wireline Competition Bureau ("Wireline Bureau" or "the Bureau") were to interfere with or circumvent negotiations of a contingency rollback solution in connection with the Local Number Portability Administration ("LNPA") transition.

As the Commission is aware, as part of the LNPA transition process, Neustar, the North American Portability Management LLC ("the NAPM"), the Transition Oversight Manager ("TOM"), and Telcordia Technologies, Inc. d/b/a iconectiv ("Telcordia") have been negotiating a contingency rollback plan in the event of problems with the cutover to the new LNPA. To date, the parties have been unable to agree on the form or testing parameters of the rollback solution. Neustar's position has been and remains that only an automated contingency rollback plan would effectively prevent significant disruption to the industry and consumers should there be issues with the cutover and that the parties must engage in sufficient testing of any rollback mechanism before the cutover occurs to ensure its effectiveness. On the other hand, other parties maintain that a manual rollback will suffice and insist that only limited testing is necessary. Negotiations to resolve this disagreement are ongoing, consistent with the terms of Neustar's Master Services Agreement with the NAPM ("MSA") and the FCC's rules governing their relationship.

The need for and form of a rollback plan are not new issues. Indeed, since 2016, Neustar has called for an automated rollback solution.[1] And, while they agreed at the time that an automated rollback was the right approach, the NAPM and the TOM subsequently abandoned that position because of the delays in the development of Telcordia's NPAC, combined with a constrained schedule generally.[2] Had the NAPM and the TOM adequately planned and supervised the LNPA transition, these issues would have been resolved long before the April 8, 2018 cutover deadline that is fast approaching.

To the extent the Commission is inclined to take some action, it should extend the April 8, 2018 cutover deadline, which is an arbitrary date selected by the NAPM and Telcordia and blessed by the FCC. A reasonable extension of this deadline would allow the parties to continue negotiating an acceptable resolution that will safeguard all interested parties and protect the public from the catastrophic interruption to our nation's telecommunications system that could occur should the cutover to the new LNPA not go as smoothly as is hoped.

However, what the Commission cannot do is inject itself into or otherwise short-circuit the parties' negotiations by, for example, purporting to require Neustar to facilitate a manual rollback or declaring that Neustar's failure to do so would implicate the MSA. Any such action by the Commission would be unlawful because agency intervention into the private negotiations of Neustar and the NAPM would: (1) violate the FCC's rules, which establish a detailed process for resolution of disputes concerning local numbering portability issues – a process that does not authorize unilateral action by the agency; (2) contravene the Federal Arbitration Act ("FAA"), given that the MSA contains a mandatory arbitration clause; (3) run afoul of decades of Commission precedent, which enshrine the Commission's refusal to adjudicate private contract disputes generally and LNPA contracts specifically; and (4) exceed the FCC's authority, which does not include the power to grant a

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[1] *See* Letter from Thomas J. Navin, Counsel to Neustar, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Dockets Nos. 09-109, 07-149, and CC Docket No. 95-116 at 2 (Feb. 1, 2018).

[2] *See* Letter from Thomas J. Navin, Counsel to Neustar, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Dockets Nos. 09-109, 07-149, and CC Docket No. 95-116 at 5 (Feb. 23, 2018) ("Feb. 23 Neustar Letter") ("[NAPM, TOM, and iconectiv] abandoned efforts to drive consensus on the specifics of an automated rollback plan only after delays in iconectiv's development combined with a constrained schedule generally.").

mandatory injunction under the facts of this case. Finally, any intervention by the Bureau (as opposed to the full Commission) would be unlawful for the substantive reasons just enumerated but also would exceed the scope of the Bureau's delegated authority.

I. NEUSTAR IS NOT CURRENTLY OBLIGATED TO PARTICIPATE IN ANY CONTINGENCY ROLLBACK PLAN.

Neustar's LNPA obligations are set forth in the MSA, the plain terms of which do not require Neustar to participate in any contingency rollback plan – manual or otherwise. Shortly after the Commission approved Telcordia's selection as the new LNPA, Neustar and the NAPM amended the MSA to address Neustar's responsibilities in facilitating the transition to Telcordia.[3] Although Neustar agreed to participate and cooperate in tasks related to a fallback (among other things),[4] the MSA does not obligate Neustar to participate in the planning, development, or implementation of a rollback solution.

Indeed, the parties have *expressly* acknowledged the absence of an agreement regarding (i) any duties or obligations of Neustar related to a contingency rollback, and (ii) "any processes of any kind relating to [c]ontingency [r]ollback."[5] The NAPM has further acknowledged its "explicit understanding" that "the terms and conditions of any [c]ontingency [r]ollback shall be mutually agreed, in writing, which terms and conditions of any such [c]ontingency [r]ollback (hereinafter referred to as a "Contingency Rollback Agreement") have not yet been agreed."[6] And the parties stipulated that Neustar's "obligations to commence and to conclude a [c]ontingency [r]ollback shall only be pursuant to and in accordance with the

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3 Amendment No. 97 Under Contractor Services Agreement for Number Portability Administration Center/Service Management System (Apr. 7, 2015) ("Amendment 97").

4 *See id.* § 7.3.5 ("In connection with Transition Services, Contractor shall participate in ... planning and development, but not implementation or ongoing Service provision, for both data migration and fallback ...").

5 Change Order No. 4 (NE) to Amendment No. 97 to Contractor Services Agreement for Number Portability Administration Center/Service Management System, § 5.3 (2018).

6 *Id.*

terms and conditions of a Contingency Rollback Agreement, and only as specifically provided and detailed therein."[7]

The parties have not entered into a Continency Rollback Agreement. Nor have the parties otherwise amended the MSA to incorporate any rollback solution. Neustar has abided by and will continue to abide by its contractual obligations, which currently do not include participating in any contingency rollback plan, let alone the manual rollback approach advocated by some parties.

II. ANY COMMISSION INTERVENTION IN THE PARTIES' NEGOTIATIONS OF A CONTINGENCY ROLLBACK PLAN WOULD VIOLATE THE COMMISSION'S RULES.

The FCC established comprehensive rules governing disputes related to the LNPA that have been in place for more than twenty years. These rules expressly prohibit the Commission or the Bureau from intervening in an LNPA dispute absent compliance with the procedures set forth in those rules – procedures that have not been satisfied in the current dispute over a contingency rollback plan.

Direct oversight of the LNPA falls to the North American Numbering Council ("NANC"). 47 C.F.R. § 52.26(b)(3). In the event of any dispute between Neustar and the NAPM, the FCC's rules mandate that the "[p]arties shall attempt to resolve issues regarding number portability deployment among themselves and, if necessary, under the auspices of the NANC." *Id.* The rules provide for Wireline Bureau involvement only if a party objects to the NANC's proposed resolution, and even then, require the Bureau to seek public comment on that recommendation. *Id.* Only at the conclusion of the comment cycle would the Bureau have the authority to issue an order adopting, modifying, or rejecting the NANC's recommendation. *Id.*

It is "axiomatic" that the FCC "'is bound by its own regulations.'"[8] Here, the FCC's regulations do not permit unilateral action by the agency to resolve the dispute between Neustar and the NAPM regarding a contingency rollback plan. Rather, in the event the parties are unable to resolve that dispute, the FCC must wait

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[7] *Id.*

[8] *Nat'l Envtl. Dev. Ass'ns Clean Air Project v. E.P.A.*, 752 F.3d 999, 1009 (D.C. Cir. 2014) (quoting *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1135 (D.C. Cir. 1979)); *see generally United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

for the NANC to recommend a resolution of that dispute and the Bureau to seek public comment on the NANC's proposed recommendation, after which the Bureau could adopt, modify, or reject the NANC's recommendation. Any failure by the Commission or the Bureau to follow this process would violate the agency's rules.

III. ANY COMMISSION INTERVENTION IN THE PARTIES' NEGOTIATIONS OF A CONTINGENCY ROLLBACK PLAN WOULD ABROGATE THE MANDATORY ARBITRATION CLAUSE IN THE MSA AND THUS CONTRAVENE THE FAA.

The MSA and the FAA prohibit the Commission or the Bureau from intervening in the parties' negotiations by, for example, issuing a declaration or order concerning a contingency rollback plan. In the MSA, the parties agreed that "[a]ny dispute" between Neustar and the NAPM that "arises out of or related to the [MSA], which cannot be resolved by negotiation, shall be settled by binding arbitration."[9] The parties' inability to reach agreement on a contingency rollback plan represents matters squarely governed by the MSA.[10]

The FAA expressly provides that arbitration agreements (such as the mandatory arbitration clause in the MSA) are considered "valid, irrevocable, and enforceable" as a matter of federal law,[11] and must be enforced as written.[12] Courts routinely have endorsed and applied a federal policy favoring arbitration and the enforcement of arbitration agreements. Indeed, in the past eight years alone, the Supreme Court has consistently enforced arbitration agreements in the face of all manner of attacks on their validity and enforceability.[13] Commissioner O'Rielly has criticized attempts

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9 *See* Agreement for Number Portability Administration Center/System Management Services between Lockheed Martin IMS and Mid-Atlantic Carrier Acquisition Company, LLC, § 26.2 (1997) ("Neustar MSA"); *see id.* § 26.1.

10 This is the case even though, as discussed above, the MSA (as amended) does not require Neustar to participate in a manual rollback plan, because Amendment No. 97 governs the transition process. The parties may, however, agree to amend the MSA and Amendment 97 to add new transition responsibilities, and negotiations between the parties of such an amendment are ongoing.

11 9 U.S.C. § 2.

12 *See id.* § 3 ("in accordance with the terms of the agreement"); *id.* § 4 (same).

13 *See, e.g.*, *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 471 (2015) (holding that the FAA preempts state laws allowing contractual language that bars class

by the FCC to "insert itself into mandatory arbitration," explaining that "[a]ny foray into mandatory arbitration clauses is unlikely to withstand legal challenge."[14] This criticism would be equally applicable here if the FCC were to abrogate Neustar's arbitration agreement with the NAPM by unilaterally making decisions regarding a contingency rollback plan.

Indeed, the NAPM has raised the contingency rollback issue in a pending arbitration with Neustar, which is all the more reason for the FCC to refrain from taking action in an attempt to resolve this dispute. The arbitrator's decision in this pending arbitration could moot any action the FCC proposes to take. And the FCC *is required* to wait for this arbitration process to conclude before it takes action. The MSA provides for potential involvement by the Commission *only after the arbitration process has run its course*, and then only if a party appeals an arbitrator's decision to the FCC and the matter is within the agency's jurisdiction.[15] The MSA does not permit Commission (or Bureau) action in any other circumstance. Thus, unless the parties have completed the arbitration process and sought review by the Commission, the agency could not lawfully take action on matters related to the MSA, including a contingency rollback plan.

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action waivers); *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 237-38 (2013) (holding that the FAA does not permit courts to invalidate a contractual waiver of class arbitration on the ground that the plaintiff's costs of individually arbitrating a federal statutory claim exceed the potential recovery); *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012) (holding that the FAA "requires courts to enforce agreements to arbitrate according to their terms ... even when the claims at issue are federal statutory claims, unless the FAA's mandate has been overridden by a contrary congressional command" (internal quotation marks and citations omitted)); *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21-22 (2012) (summarily reversing the Oklahoma Supreme Court and reaffirming that challenges to the entire agreement, as opposed to challenges to the arbitration clause itself, are for the arbitrator to decide).

[14] *In re Protecting the Privacy of Customers of Broadband & Other Telecomm. Servs.*, Report and Order, 31 FCC Rcd 13911, 14128 (2016) (statement of Commissioner O'Rielly), nullified by Pub. L. No. 115-22.

[15] Neustar MSA § 26.2.

IV. ANY COMMISSION INTERVENTION IN THE PARTIES' NEGOTIATIONS OF A CONTINGENCY ROLLBACK PLAN WOULD RUN AFOUL OF COMMISSION PRECEDENT.

As discussed above, the dispute between Neustar and the NAPM regarding the form and testing of a contingency rollback solution is a private matter between two parties to a contract. The Commission has a "longstanding policy of refusing to adjudicate private contract law questions"[16] – a policy to which the agency has adhered for decades.[17] As the FCC has observed, "[i]t is well established [that the] Commission is not the proper forum for resolving private contractual disputes,"[18] absent "a showing of a violation of the Commission's rules or federal statute."[19] By declining to intervene into "private commercial contract[ual] disputes," the FCC is

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16 *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *In re Stop 26 Riverbend, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 22734, 22736 ¶ 6 (2003) ("The staff action fully accords with the Commission's longstanding policy to defer to state and local courts on private contractual matters while retaining exclusive jurisdiction over broadcast station licensing.").

17 *See, e.g.*, *In re Thomas K. Kurian,* Memorandum Opinion and Order, 25 FCC Rcd. 13863, 1385 ¶ 6 (2010) (The Commission does not "interven[e] in private contractual disputes that are the province of the courts."); *In re Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8762 ¶ 139 (2010) ("[T]he disputes between the Tribe and Verizon Wireless encompass contractual matters in which the Commission ordinarily does not become involved."); *In re Applications of: Milford Broadcasting Co.,* Hearing Designation Order, 8 FCC Rcd 680, 680 ¶ 2 (1993) ("The Commission has consistently held that private disputes are beyond our regulatory jurisdiction and must be resolved in a local court of competent jurisdiction."); *In re Applications of Centel Corp., Sprint Corp., and FW Sub Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 1829, 1831 ¶ 10 (1993) ("The Commission has repeatedly stated that it is not the proper forum for the resolution of private contractual disputes, noting that these matters are appropriately left to the courts or to other fora that have the jurisdiction to resolve them.").

18 *In re Jackson*, Memorandum Opinion and Order, 18 FCC Rcd 26403, 26404 ¶ 6 (2003).

19 *In re Loral Satellite, Inc. & Loral SpaceCom Corp., Assignors & Intelsat N. Am., LLC, Assignee*, Order and Authorization, 19 FCC Rcd 2404, 2420 ¶ 37 (2004) ("*Loral/Intelsat Order*").

able to focus on its own regulatory objectives.[20] According to the Commission, the proper forum for resolving private commercial disputes "is a forum that normally handles contractual disputes, such as a court of competent jurisdiction or an arbitrator."[21]

The FCC has consistently applied this longstanding policy to Neustar's contracts since Neustar became the LNPA in 1997, including throughout the current LNPA transition. Indeed, without any FCC involvement, the parties have successfully negotiated multiple amendments to the MSA addressing transition issues.[22]

To justify a departure from the Commission's longstanding policy of declining to intervene in private commercial disputes generally and administration of the LNPA specifically, the FCC would not only need to acknowledge that it is changing its approach, but also would have to explain "why it is reasonable to do so," which it simply cannot do here.[23] As discussed herein, any unilateral intervention by the Commission in the private contractual dispute between Neustar and the NAPM would violate the Commission rules, the MSA, and the FAA. Consequently, the Commission should continue to defer to private parties in resolving their commercial disputes, as it has for years.

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20 *Loral/Intelsat Order,* 19 FCC Rcd at 2421 ¶ 39.

21 *Suzanne S. Goodwyn, Esq.*, Letter, 31 FCC Rcd. 6831, 6832 (2016).

22 Neustar MSA § 13.1 (describing the process for the NAPM to request additional services from Neustar). *See, e.g.*, Amendment 97.

23 *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1044, *modified on other grounds on reh'g*, 293 F.3d 537 (D.C. Cir. 2002)); *see, e.g.*, *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009); *CBS Corp. v. FCC*, 663 F.3d 122, 151-52 (3d Cir. 2011); *Ramaprakash v. FAA*, 346 F.3d 1121, 1125 (D.C. Cir. 2003) ("An agency's failure to come to grips with conflicting precedent constitutes 'an inexcusable departure from the essential requirement of reasoned decision making.'") (quoting *Columbia Broad. Sys. v. FCC*, 454 F.2d 1018, 1027 (D.C. Cir. 1971)).

V. THE FCC LACKS THE AUTHORITY OR ANY LEGITIMATE BASIS TO COMPEL NEUSTAR TO TAKE ANY ACTION RELATED TO A CONTINGENCY ROLLBACK PLAN.

The Commission similarly has no authority to compel Neustar to take any action related to a continency rollback plan. To be sure, the FCC may have some limited authority to order temporary injunctive relief to preserve the status quo while the Commission considers enforcement of the Communications Act or its rules.[24] However, this case involves a private commercial dispute, not any alleged violations of law, and requiring Neustar to participate in a contingency rollback plan would involve a *mandatory* injunction, as opposed to merely maintaining the status quo.

A mandatory injunction is appropriate only in exceedingly rare cases; injunctive relief in general is viewed as "extraordinary" in nature,[25] and an affirmative injunctive order can generally be justified only where a party has a "clear" entitlement to relief or can demonstrate "extreme" irreparable harm absent an order.[26] In the circumstances presented here, the FCC could not justify ordering

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[24] *See, e.g., Charter Communs. Entm't, I, LLC*, Memorandum Opinion and Order, 22 FCC Rcd 13890, 13891 (2007) (finding it "within the Commission's enforcement authority to stay a recent rate order by a franchising authority that appears likely, as the City does here, to lose its rate authority because of effective competition in its franchise area"); *Revision of the Commission's Program Carriage Rules*, Second Report and Order and Notice of Proposed Rulemaking, 26 FCC Rcd 11494, 11513-11514 (2011) (issuing a standstill order in program access cases); *Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22566 n.464 (1997).

[25] *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (noting that an injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief") (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*)).

[26] *See, e.g., Columbia Hosp. for Women Found., Inc. v. Bank of Tokyo-Mitsubishi Ltd.*, 15 F. Supp. 2d 1, 4 (D.D.C. 1997) (citation omitted) ("'[W]here an injunction is mandatory—that is, where its terms would alter, rather than preserve, the status quo by commanding some positive act—the moving party must meet a higher standard than in the ordinary case by showing 'clearly' that he or she is entitled to relief or that 'extreme or very serious damage' will result from the denial

Neustar to participate in a contingency rollback solution, particularly when Neustar has no contractual obligation to do so.

Furthermore, issuing injunctive relief would require a showing that such relief would, among other things, further the public interest.[27] But here the public interest does not support compelling Neustar to participate in an untested manual rollback solution and, indeed, doing so would contravene the public interest. Industry best practices recommend having a fully functioning, tested, automated rollback for a complex transition such as this one.[28] Indeed, one expert has attested that an

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of the injunction."'), *aff'd*, 159 F.3d 636 (D.C. Cir. 1998); *see also Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 405–06 (2d Cir. 2011) ("The burden [for obtaining an injunction] is even higher on a party like [the appellant] that seeks a mandatory preliminary injunction that alters the status quo by commanding some positive act, as opposed to a prohibitory injunction seeking only to maintain the status quo."); *Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir. 2010) ("A mandatory preliminary injunction—one which requires the nonmoving party to take affirmative action—is 'an extraordinary remedy' and is generally disfavored."); *Mercedes-Benz U.S. Int'l, Inc. v. Cobasys, LLC*, 605 F. Supp. 2d 1189, 1196 (N.D. Ala. 2009) ("When a preliminary injunction goes beyond the status quo and seeks to force one party to act, it becomes a mandatory or affirmative injunction and the burden placed on the moving party is increased.").

[27] *See In re GHz Frequency Bands*, 19 FCC Rcd 10777, 10788-89 ¶¶ 25-26 (2004) (explaining the four elements for obtaining emergency relief and explaining that public interest did not support granting a stay); *In re Carriage of Digital Television Broadcast Signals*, 27 FCC Rcd 10217 (2012) ("*Viewability Stay Denial*") (denying stay where FCC found that, *inter alia*, public interest did not warrant a stay); *see also, e,g., Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) ("*Virginia Petroleum*"); *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) ("*Washington Metro*").

[28] *See* Feb. 23 Neustar Letter at 5 ("The choice to forego an automated and testable contingency rollback plan is squarely at odds with accepted IT best practices."); Declaration of Cheryl Smith, *attached to* Letter from Thomas J. Navin, Counsel to Neustar, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Dockets Nos. 09-109, 07-149, and CC Docket No. 95-116 (Feb. 16, 2018) ("Industry standards state that there should be a tested, redundant system ready to handle things if the rollout has a problem.") ("Smith Declaration").

automated rollback minimizes disruption and that a "manual rollback solution provides none of the benefits inherent in a typical contingency rollback plan," is not "a real contingency rollback plan," and "will not ensure protection for consumers from disruption."[29]

Even if the parties reached consensus on a rollback solution, they still disagree on testing. Neustar believes that any contingency rollback must be fully tested—meaning that participation in the test should be mandatory, include all affected service providers, and follow a defined set of success criteria—to ensure that it will work if needed. This position is supported by generally accepted IT best practices.

Given the condensed timeframe remaining before the April 8, 2018 deadline, the NAPM, the TOM, and Telcordia instead propose a limited testing process that will inadequately verify the rollback's workability. Their proposed testing parameters – voluntary, un-sequenced, low-volume testing among a self-selected handful of providers, with no compulsory reporting of results and no defined success criteria – would provide no assurance that the rollback would work as required. If a rollback were necessary, use of the manual rollback mechanism would necessitate that the entire industry make use of new and untested procedures for the first time, almost certainly disrupting vital consumer services. Full and complete testing is therefore essential to provide industry experience working with the rollback and to ensure that rollback can handle demand should a failure occur.

Compelling Neustar to participate in a contingency rollback solution that does not maximize benefits of an automated rollback or is not fully tested would not be in the public interest. If anything, it would put the public at *greater* risk given the potential disruption that will ensue if the rollback fails, which is fatal to meeting the public interest requirement necessary for the Commission to grant a mandatory injunction.

To justify issuing an injunction, the Commission also would have to consider the merits of the parties' dispute, whether the NAPM would suffer irreparable injury absent an injunction, and harm to third parties.[30] None of these elements weighes in favor of an injunction.

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29 Smith Declaration.

30 *See, e.g.*, *Va. Petroleum*, 259 F.2d at 925; *Washington Metro*, 559 F.2d at 843.

For example, the NAPM, Telcordia, or any other interested party would not suffer irreparable harm absent an injunction, which is "generally a critical element in justifying" any form of injunction.[31] To the contrary, a requirement that Neustar participate in a manual rollback would more likely harm these parties (as well as others and the public), and could do so in a manner that might well be irreparable. Indeed, should the cutover fail without a proven, tested rollback solution in place, the LNPA system—which the Commission has recognized and all parties agree is a "critical" part of our nation's communications infrastructure—would be placed at grave risk.[32]

The issuance of any form of injunctive relief also presupposes the lack of an adequate legal remedy.[33] Here, there is an obvious remedy short of an affirmative order directing Neustar to participate in any continency rollback plan, namely extending the April 8, 2018 deadline. An extension of this deadline would give the parties time to reach an agreement on a contingency rollback mechanism and, importantly, provide adequate time to fully test that mechanism to ensure its effectiveness.

For the same basic reasons, the FCC could not justify waiving its rules or policies—including the NANC procedural rules or its policy against interfering in private contractual disputes—as part of any decision purporting to compel Neustar to participate in a contingency rollback. The Commission may only waive its rules for good cause, which requires consideration of the public interest.[34] Good cause does not exist here because, as discussed above, compelling Neustar's participation in an

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31 *Viewability Stay Denial*, 27 FCC Rcd at 10220 n.28 ¶ 9; *see Winter*, 555 U.S. at 22 ("Our frequently reiterated standard *requires* plaintiffs seeking an injunction to demonstrate that irreparable injury is likely in the absence of an injunction.") (emphasis added).

32 *See, e.g.*, Letter from Chairman Ajit Pai to Lisa Hook, *et al.*, WC Docket Nos. 09-109, 07-149, CC Docket Nos. 99-200, 95-116, 92-237 (Feb. 2, 2018).

33 *See Younger v. Harris*, 401 U.S. 37, 43–44 (1971) (equitable relief not available if an adequate remedy at law exists); *Switzer v. Coan,* 261 F.3d 985, 991 (10th Cir. 2001) ("[E]quitable relief is available only in the absence of adequate remedies at law.").

34 47 C.F.R. § 1.3; *Omnipoint Corp. v. F.C.C.*, 78 F.3d 620, 631 (D.C. Cir. 1996) ("Good cause exists where particular facts would make strict compliance inconsistent with the public interest.").

untested manual contingency rollback would likely cause great public interest harm, given the risk of disruption should the rollback fail. And, in any event, the FCC lacks any authority to waive the mandatory arbitration clause of the MSA, given that its enforcement is required by the FAA and the Commission is not charged with administering that statute.[35]

VI. ANY INTERVENTION IN THE PARTIES' NEGOTATIONS OF A CONTINGENCY ROLLBACK PLAN BY THE WIRELINE BUREAU WOULD EXCEED THE SCOPE OF ITS DELEGATED AUTHORITY.

The issuance of an order or declaration related to a contingency rollback plan by the Wireline Bureau would not only be unlawful for the reasons provided above, it also would exceed the scope of the authority delegated to the Bureau. Although the Commission delegated authority to the Wireline Bureau to oversee the LNPA transition,[36] the Bureau cannot use its delegated authority "to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."[37]

Intervention here would conflict with this limitation in numerous ways, by abrogating FCC procedural rules requiring private negotiation followed by escalation to NANC, the parties' mandatory arbitration clause and the FAA, and twenty years of precedent, as well as potentially requiring unprecedented waivers of Commission rules and policies. Such action would constitute precisely the types of

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35 *Cf. Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 564 (9th Cir. 2016) ("[Courts] give no deference to interpretations of statutes by agencies not charged with administering them."); *City of Olmsted Falls, Ohio v. F.A.A.*, 292 F.3d 261, 270 (D.C. Cir. 2002) ("[W]hen we are faced with an agency's interpretation of a statute *not* committed to its administration, we give no deference.").

36 *In re Telcordia Technologies, Inc. Petition to Reform Amendment 57 & to Order a Competitive Bidding Process for Number Portability Administration*, Order, 31 FCC Rcd 8406, 8423 ¶ 44 (2016), *aff'd sub nom, Neustar Inc. v. FCC*, 857 F.3d 886 (D.C. Cir. 2017).

37 47 C.F.R. § 0.291(a)(2).

"novel question[s] of fact, law or policy" that the Wireline Bureau cannot resolve on delegated authority.[38]

* * *

For all these reasons, a decision by the Commission or the Bureau to interfere with the private contractual dispute between Neustar, and the NAPM regarding a contingency rollback plan would be unlawful. To the extent the FCC feels compelled to take any action on this issue, it should extend the April 8, 2018, deadline for the transition, which would give the parties additional time to negotiate a resolution that will safeguard all interested parties and the public from the potential for catastrophic interruption to our nation's telecommunications system.

Thank you for your consideration of this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Thomas J. Navin
Counsel to Neustar, Inc.

cc: Amy Bender
Matthew Berry
Nicholas Degani
Michele Ellison

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[38] Indeed, Chairman Pai and Commissioner O'Rielly have frequently recognized the bounds of delegated authority and routinely criticized the prior administration's actions stretching its limits. *See, e.g.*, Press Release, FCC, Joint Statement of Commissioners Ajit Pai and Michael O'Rielly on the Abandonment of Consensus-Based Decision-Making at the FCC (Dec. 18, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1218/DOC-331140A1.pdf (Commissioners Pai and O'Rielly commenting on the abuses of delegated authority); *In re Amendment of Parts 0, 1, 2, & 15 of the Commission's Rules Regarding Authorization of Radiofrequency Equip.*, 29 FCC Rcd 16335 (2014) (Commissioner O'Rielly dissenting) ("I cannot support language that allows a bureau to determine the bounds of its own delegated authority based on a subjective and vague standard . . ..").

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